

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

3 IN THE MATTER OF, Case No. 13-53846
4 CITY OF DETROIT, MICHIGAN Detroit, Michigan
_____/ June 3, 2015
4:36 p.m.

IN RE: APPLICATION FOR ADMINISTRATIVE EXPENSE, FILED BY CREDITOR SHEILA REED, APPLICATION FOR ADMINISTRATIVE EXPENSE, FILED BY CREDITOR SHERELL STANLEY, SHERELL STANLEY'S MOTION FOR THE EXTENSION OF TIME/LATE FILING OF HER APPLICATION FOR ADMINISTRATIVE EXPENSE CLAIM, APPLICATION FOR ADMINISTRATIVE EXPENSES FILED BY CREDITOR EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND CORRECTED APPLICATION FOR ADMINISTRATIVE EXPENSES AND ANSWER TO OBJECTION TO NOTICE OF CLAIM FOR ADMINISTRATIVE EXPENSES.

BEFORE THE HONORABLE THOMAS J. TUCKER
TRANSCRIPT ORDERED BY: ROBIN WYSOCKI

APPEARANCES:

For the City of Detroit: MARC SWANSON, ESQ. (P71149)
Miller, Canfield, Paddock &
Stone
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For the EEOC: DALE PRICE, JR., ESQ. (P55578)
Equal Employment Opportunity
Commission
477 Michigan Avenue
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PRESENT: Sheila Reed
Sherell Stanley

Court Recorder: Jamie Laskaska

Transcriber: Deborah L. Kremlick

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1 (Court in Session)

2 THE CLERK: All rise. This Court is now in session.
3 The Honorable Thomas J. Tucker is presiding. You may be
4 seated. The Court calls the case of the City of Detroit,
5 Michigan, case number 13-53846.

6 THE COURT: All right. Good afternoon everyone.
7 Let's have entries of appearance for the record. I understand
8 we don't have anyone on the telephone today. We'll start with
9 the debtor's side and then go from there.

10 MR. SWANSON: Thank you, Your Honor. Marc Swanson
11 from Miller, Canfield, Paddock, and Stone here on behalf of
12 the City of Detroit.

13 MR. PRICE: Yes, Your Honor. Dale Price on
14 behalf --

15 THE COURT: Wait, come up to the mike -- microphone.

16 MR. PRICE: Oh, to the microphone, sure.

17 THE COURT: Say it again.

18 MR. PRICE: Dale Price on behalf of the EEOC.

19 THE COURT: All right. And then we may have some
20 persons who are parties in interest, claimants who are not
21 represented by counsel. I'll ask you to -- when -- when you
22 get a chance to come up to the podium and speak, I'll ask you
23 to say your name for the record, please.

24 Let's then turn to our agenda of matters to be heard

25 today. Mr. Swanson, there are basically three matters
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1 involving three administrative claimants scheduled for hearing
2 today.

3 I don't care what order we take them in. If you have a
4 preference, you go ahead, otherwise we'll just take them in
5 the order they are listed.

6 MR. SWANSON: Sure, Your Honor. With -- with the
7 Court's permission, I think the -- the arguments of the city
8 advances apply almost equally to all three. So I was going to
9 address all three at -- at once if the -- if the Court will
10 allow.

11 THE COURT: No, one at a time.

12 MR. SWANSON: One at a time, okay.

13 THE COURT: So Sheila Reed.

14 MR. SWANSON: Sure. Your Honor --

15 THE COURT: If you -- are you Ms. Reed?

16 MS. REED: Yes.

17 THE COURT: Come on up. You can come up, stand at
18 the podium and I'll give you a chance to speak after we hear
19 from Mr. Swanson for the city.

20 MS. REED: Yes, sir.

21 THE COURT: So identify yourself please for the
22 record.

23 MS. REED: Sheila Reed, police officer, City of
24 Detroit Police Department.

1 Swanson. Then we're -- we're hearing first then the city's
2 objection to Sheila Reed's application for administrative
3 expense claim. Go ahead.

4 MR. SWANSON: Thank you, Your Honor. Ms. Reed filed
5 her application on January 30th, 2015. Pursuant to the plan
6 which was confirmed by this Court, the deadline to file
7 administrative expenses was January 26th, 2015.

8 Ms. Reed did not file a request to extend that date or
9 file a motion citing any sort of excusable neglect. The
10 notice of the effective date which quite clearly stated the
11 deadline for filing administrative expense was mailed to Ms.
12 Reed. We've cited the certificate of service and -- and --
13 and it -- it was mailed to her timely.

14 Your Honor, we would ask that the application be
15 disallowed because it was not filed on time. Further, Your
16 Honor, this is not the type of expense that is an
17 administrative expense in a Chapter 9 case. As this Court
18 held last week, only costs of administration in a Chapter 9
19 case constitute administrative expenses.

20 Ms. Reed's, it's a discrimination case. I believe that's
21 not a cost of administration. So even if the Court were to
22 allow Mrs. Reed to make a timely filing the city advances of
23 that would be fruitless because the application would be
24 denied in any event. Thank you.

1 fruitlessness argument you just made was not in your written
2 objection, right?

3 MR. SWANSON: That as correct, Your Honor.

4 THE COURT: The only thing --

5 MR. SWANSON: It was a timeliness objection.

6 THE COURT: Yeah, the thing you argue in there was
7 that the -- Ms. Reed's administrative claim, expense claim was
8 filed untimely. All right.

9 Well, by the way, while we're on the subject, Mr.
10 Swanson, what -- what's the city's view on how these -- how
11 discrimination claims or Title 7 claims of various kinds, how
12 -- how -- that arised based on conduct that occurred after the
13 bankruptcy petition date, how they are to be properly handled.

14 MR. SWANSON: Sure.

15 THE COURT: And -- and considered and treated.

16 MR. SWANSON: Your Honor, there is a provision in
17 the plan regarding ordinary course claims. I think most of
18 these claim B of C have not even determined whether there was
19 cause to go forward. You know, if and when there is cause to
20 go forward, we would ask claimants to contact the city and as
21 was explained last week, the city will -- will look into those
22 claims and investigate those claims.

23 THE COURT: Well, so are -- are you saying that
24 these post-petition Title 7 claims, that's just an example,

1 adjustment?

2 MR. SWANSON: Your Honor, I have not researched that
3 point. I mean if and when a valid claimant would come forward
4 we could opine on that at that point, or we could -- I think
5 the safest course would be for the claimant to come back here.
6 But we have not -- I don't have an opinion on that question.

7 THE COURT: But what -- what I'm trying to
8 understand is what the city's position is on -- on what a
9 claimant who has a post-petition Title 7 claim should do to
10 prosecute the claim if the city refuses to pay it.

11 MR. SWANSON: I believe lots of claims --

12 THE COURT: And you know you've argued it's not an
13 administrative expense claim.

14 MR. SWANSON: Sure.

15 THE COURT: And it's obviously not a pre-petition
16 claim. Assume -- assuming somebody has a post-petition, that
17 is a Title 7 claim that arises after the filing of the
18 petition in the Chapter 9 case.

19 MR. SWANSON: Sure.

20 THE COURT: And they -- they get a -- they get even
21 a notice of right to sue from the EEOC. What do they do? Do
22 they just sue the city? There's nothing to prevent them from
23 suing the city. The claims aren't discharged and there's no
24 injunction against them suing the city, is that the -- the --
25 the city's position?

1 MR. SWANSON: I don't believe, you know, the -- the
2 stay would apply. The stay has gone away. With respect to
3 the plan injunction, I would have to -- to -- to look at that
4 to see what types of claims were -- were discharged.

5 But to the extent that there are valid post-petition
6 claims, I don't believe the stay applies. They're certainly
7 not administrative expense claims. But to the extent that
8 there's any question on -- on what to do, I think the safest
9 course of action would be to come back here and we can deal
10 with that issue at -- at that point.

11 THE COURT: Come back here how?

12 MR. SWANSON: File a motion to allow a -- a -- an
13 action post-petition, pre-effective date action to proceed
14 because of some ordinary course claim, or it fits within the
15 -- the plan in -- in some other manner.

16 THE COURT: Well, it -- it has to be either be a
17 claim that's treated in one of the classes of the plan.

18 MR. SWANSON: Sure.

19 THE COURT: Or if it isn't, because it's a
20 post-petition claim, maybe it's an ordinary course claim.

21 MR. SWANSON: Sure.

22 THE COURT: Or maybe there's some other way it needs
23 to be treated, but if it's not an administrative claim as
24 you've argued and it's not a claim -- a claim that's treated
25 by the plan or otherwise discharged by the confirmed plan

1 then the claimant has -- must have the right to pursue the
2 claim and how do they do that. Well, if they get an EEOC
3 notice of right to sue and they can't resolve their claim with
4 the city, don't they sue the city?

5 MR. SWANSON: If it's not treated by the plan, it's
6 not discharged by the plan, then I would -- I -- I don't see
7 any other impediment to allowing them to sue.

8 THE COURT: Are -- are these claims discharged by
9 the plan, or you're not sure?

10 MR. SWANSON: I am not sure. I would like to -- to
11 take a look at that. I mean --

12 THE COURT: All right. Well, okay. Now I've asked
13 these questions because this issue is -- is coming up.

14 MR. SWANSON: Sure.

15 THE COURT: With regularity. You've argued this
16 sort of futility argument with respect to the other
17 administrative claims that we're going to talk about today
18 too, I think.

19 MR. SWANSON: Sure.

20 THE COURT: Futility meaning you've argued that
21 these are not, whatever they may be, these post-petition
22 discrimination claims are not properly viewed as an
23 administrative claim -- administrative expense claims in a
24 Chapter 9 case.

1 THE COURT: Because they're not costs of
2 administering the Chapter 9 bankruptcy case. That's been the
3 argument the city is -- is making on that.

4 Okay. Well, in the case of -- of Ms. Reed, as I said,
5 I'm not going to rule on that or consider that futility
6 argument at this point because that wasn't in the city's
7 written objection. The only thing in the objection was
8 timeliness.

9 If I -- if I don't disallow or deny the -- sustain the
10 city's objection to the claim on timeliness grounds, then that
11 would not preclude the city from later arguing any grounds,
12 other grounds for objecting to the claim I would think.
13 Although you've got a deadline, I guess that you've had in the
14 confirmed plan for objecting to administrative expense claims.
15 And we're going to have to talk about that. But we'll --
16 we'll get to that if we need to.

17 MR. SWANSON: Okay.

18 THE COURT: Okay. Anything else you want to say
19 about the objection to this administrative claim before we
20 hear from Ms. Reed?

21 MR. SWANSON: No, Your Honor.

22 THE COURT: All right. Ms. Reed, what would you
23 like to say about this?

24 MS. REED: Good afternoon, Your Honor. Initially I
25 had -- I filed a claim through the EEOC. Mr. Dale Price he
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1 was notified -- he was not notified in a timely manner that
2 the deadline I think was around the 21st of January.

3 So the day that he called me and also emailed me to
4 advise me. We talked on the phone. He said you need to go
5 file it on that day that's why I can't -- I left work and came
6 and filed it on that particular day.

7 This case, the whole case stems from a incident that I
8 was involved in, a shots fired incident, on a domestic
9 violence, Your Honor. And they render -- the department
10 rendered that me and my partner was both sustained misconduct.

11 However they decided not to charge my partner criminally.
12 They charged me criminally. They got denied. They charged me
13 departmentally only me. Suspended me for ten days. They
14 didn't do the proper investigation through the department.
15 The guy had like five guns in the house, didn't do a gun
16 residue test. They failed to do the proper investigation so
17 that's why I filed an initial EEOC complaint.

18 THE COURT: Your administrative expense claim that
19 you filed on January 30, 2015, and for the record it's docket
20 number 9135, and which the city is objecting to, says that the
21 -- the city's actions that you have said -- claim are sex --
22 sex discrimination violated with Title 7 began on January 14,
23 2014.

24 MS. REED: Yes.

1 date forward that --

2 MS. REED: Yes.

3 THE COURT: -- through the -- and after that -- that
4 is the time period when the --

5 MS. REED: Yes.

6 THE COURT: -- the alleged discrimination occurred.

7 MS. REED: Yes.

8 THE COURT: Right? Okay. Now what -- what were you
9 saying earlier? You said --

10 MS. REED: Uh, it --

11 THE COURT: Excuse me. Excuse me.

12 MS. REED: Oh.

13 THE COURT: Yeah. You said Dale Price. Now he's the
14 attorney for the EEOC of course.

15 MS. REED: Yes.

16 THE COURT: Dale Price was not notified in a timely
17 manner of the deadline for filing administrative expense
18 claims. We're going to deal -- I think we're going to hear
19 more about that issue when we deal with the EEOC's claims --

20 MS. REED: Okay.

21 THE COURT: -- in today's hearing. But the -- the
22 question really is whether you were notified properly of the
23 January 26th, 2015 deadline for everyone to file administrative
24 expense claims. You have to speak out. You can't shake your
25 head.

1 MS. REED: No, Your Honor. I'm sorry.

2 THE COURT: Why do you say that?

3 MS. REED: Because I was notified by the EEOC. I
4 was never notified by -- well, and I didn't sign anything. He
5 said, sort of -- I was -- a process server. I was never
6 served by them. I was notified --

7 THE COURT: I'm not -- the city is not saying they
8 served you by a process server. They said they mailed the
9 notice --

10 MS. REED: They --

11 THE COURT: Excuse me.

12 MS. REED: Okay.

13 THE COURT: Don't interrupt me when I'm talking.

14 MS. REED: I'm sorry.

15 THE COURT: Wait till I'm done. Don't interrupt me.
16 As I was saying, the city is saying they mailed to you by
17 first class mail a copy of this document that was filed on
18 December 10, notice of entry of order confirming eighth
19 amended plan for the adjustment of debts of the City of
20 Detroit and occurrence of effective date.

21 That notice is a eight page document, single spaced. It
22 clearly says that the effective date of the confirmed plan of
23 adjustment was December 10, 2014. It clearly says in
24 Paragraph 7A on Page 7, that the deadline -- that all requests
25 for payment of administrative claims must be filed and served

1 on the city no later than January 26, 2015 or those claims
2 will be forever barred.

3 Now the city says that -- that that was mailed to you by
4 first class mail. Did you receive that notice?

5 MS. REED: I don't recall, Your Honor.

6 THE COURT: You don't recall?

7 MS. REED: No. I received the bankruptcy paperwork
8 that the city filed that all the City of -- City of Detroit
9 employees received regarding all the updates from the
10 bankruptcy filing through the Courts. And never regarding the
11 filing of the administrative claim, no.

12 THE COURT: Well, you don't recall whether you
13 received it, you don't recall receiving it, or you're --

14 MS. REED: I don't --

15 THE COURT: -- you're certain you did not receive
16 it? What's the answer?

17 MS. REED: I don't recall receiving it. I don't
18 believe I received it because I was only notified -- I read
19 all my mail. I was only notified through the EEOC that the
20 deadline -- about that they were notified late. So that's how
21 the claim was filed late.

22 THE COURT: Now what -- what you heard from Dale
23 Price was something that you heard sometime soon after January
24 26th?

1 THE COURT: Yeah.

2 MS. REED: The day that I filed.

3 THE COURT: All right. Well, what else did you want
4 to say about this objection by the city? Anything?

5 MS. REED: The reason for the administrative claim
6 was due to the time that I lost and getting involuntary
7 transferred to a whole nother shift. And respect to the fact
8 of well, I wasn't notified properly. That it -- they wanted
9 to dismiss the whole thing. I just got a letter a couple
10 weeks ago saying they wanted to dismiss the -- the whole
11 administrative claim that I filed it late. That's what I
12 received from them. I didn't receive anything --

13 THE COURT: And the issue today on your claim,
14 administrative expense claim, is limited to whether or not you
15 timely filed it and if you clearly didn't timely file it, and
16 then the issue becomes and is limited to whether you -- you
17 have -- basically have a good excuse for -- for not filing it
18 by the January 26 deadline, but rather filing it on January 30
19 is when you filed it, four days late.

20 And -- and as I gather you were arguing that -- you have
21 a good excuse for not filing it sooner than January 30 because
22 you didn't receive the December 10 notice of the deadline even
23 though the city says it was mailed to you. Right? Is that --
24 is that what you're saying?

1 THE COURT: All right. All right. Well, Mr.
2 Swanson, what do you want to say about -- further about this?

3 MR. SWANSON: Well, Your Honor, the certificate of
4 service was -- indicates that it was mailed to Ms. Reed. Ms.
5 Reed has not denied that she received it. She received other
6 bankruptcy paperwork.

7 THE COURT: Well, I think she is denying she
8 received it, isn't she?

9 MR. SWANSON: I think she said she didn't -- she
10 didn't --

11 THE COURT: She didn't recall it and she said she
12 reads all of her mail.

13 MR. SWANSON: Sure. Well, the case law I think is
14 fairly clear that -- that the certificate of service is valid
15 and that is evidence that it was received by the claimant
16 unless there is an indication by the claimant otherwise.

17 If -- and -- and we can argue Ms. -- Ms. Reed received
18 all other bankruptcy paperwork, why -- why would this one go
19 missing. But it was filed late. There was a clear deadline.
20 We're enforcing the deadline equally to everyone and it -- and
21 it -- and it simply wasn't timely filed. And the Court should
22 deny it on -- on that basis. And that's it.

23 THE COURT: Well, do you -- do you agree or disagree
24 with this proposition that if a -- if Ms. Reed can -- can
25 prove and the Court finds based on evidence, testimony,
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1 evidence that Ms. -- even though the city has -- has -- their
2 -- their serving and servicing agent has certified that --
3 that the notice, the December 10 notice, was mailed to her by
4 first class mail, the -- if the Court nonetheless finds that
5 she did not actually receive it, is -- is that sufficient to
6 establish excusable neglect for her failure to file her
7 administrative expense claim before January 30th? File it that
8 -- four days late like that.

9 MR. SWANSON: If the -- if the Court finds that she
10 did not receive it based on testimony that establishes
11 excusable neglect, I believe there's also an attorney from the
12 EEOC who was representing her in -- in this matter and a
13 notice was also mailed to him. I mean how many times can the
14 city --

15 THE COURT: Well, wait a minute. Mr. Price --
16 you're referring to Mr. Price.

17 MR. SWANSON: Yeah.

18 THE COURT: He's not representing Ms. Reed --

19 MR. SWANSON: I'm sorry. He's investigating her
20 charge.

21 THE COURT: -- individually, is he?

22 MR. SWANSON: No. I -- I think you could ask him,
23 but I believe he's just investigating her charge.

24 THE COURT: He's an attorney for the EEOC, not for

1 MR. SWANSON: Correct. That is correct, Your Honor.

2 THE COURT: Okay. So and I -- I assume you -- you
3 agree that the -- the order confirming the plan required at
4 Page 104, it required the paragraph where it sets this
5 deadline, required that the procedures, including procedures
6 regarding these administrative expenses, notice of that be
7 mailed to all claimants.

8 MR. SWANSON: Okay.

9 THE COURT: Okay. So if the notice, that is the
10 December 10 notice, 8649 docket number, was mailed -- was
11 actually received by Ms. Reed within a reasonable time after
12 it was mailed by the servicing agent according to their
13 certificate of service, then she had plenty of advance notice
14 by virtue of that notice of the January 26th deadline and you
15 would argue she -- there's no excusable neglect.

16 MR. SWANSON: Correct, Your Honor.

17 THE COURT: Right? Okay. So the -- the so-called
18 mailbox rule and presumption under 6th Circuit authority and
19 under the Yoder case, Bratton v the Yoder Company, holds that
20 there is a rebuttable presumption that a document mailed to an
21 addressee properly addressed and proper postage was received.

22 But it's a rebuttable presumption. It can be rebutted by
23 among other things simply testimony of the -- the addressee
24 that they never received it.

1 course, but do -- do we need an evidentiary hearing in her
2 case and in the case of any other claimants like her who say
3 they will testify that they never received the notice of the
4 January 26th, 2015 administrative expense deadline, filing
5 deadline.

6 MR. SWANSON: Well, that's certainly --

7 THE COURT: How should the Court handle this? And
8 by the way just for the record, the Yoder case is Bratton v
9 the Yoder Company, In Re: Yoder Company, 758 F 2d Page 1114,
10 6th Circuit decision from 1985. That's what I mean by the
11 Yoder case. Go on, you were -- you were saying.

12 MR. SWANSON: Your Honor, I think first off the
13 proper procedure would be for Ms. Reed to file a motion to
14 excuse her late filing like the EEOC.

15 And Ms. Stanley to the extent that after such a filing
16 the Court would find that there is an evidentiary issue, then
17 I believe the proper procedure would be to have an evidentiary
18 hearing. I don't think that's necessary here today. We're
19 not there.

20 We had a deadline. There's been no motion filed to
21 extend that deadline. And -- and the city views this as a --
22 as a cut and dry matter.

23 THE COURT: Are you -- are you arguing that I should
24 not give Ms. Reed now a chance to file such a motion?

1 would not be a fruitful motion for both the reason that the
2 certificate of service is clear that it was mailed to her.
3 She's obviously received other pleadings in this bankruptcy
4 case.

5 And it was on Page 7 of -- of this notice. I don't know
6 if there's any issue or if -- or if Ms. Reed read every single
7 piece of paper she received front to back. But even if the
8 Court were to allow this motion, and I think the city has
9 argued -- or I know the city has argued, these are not costs
10 of administration in a Chapter 9 bankruptcy case.

11 Ms. Reed may have an ordinary course claim against the
12 city, but it's -- it -- we're here today on a very narrow
13 issue, on whether any of these are administrative expenses.
14 And none of them are administrative expenses.

15 THE COURT: Well, I've already ruled that we're not
16 here today on that issue as -- as concerns Sheila Reed because
17 the city's objection -- only objection to her administrative
18 expense claim that was filed only argued timeliness.

19 MR. SWANSON: I'm sorry, Your Honor. I was trying
20 to reply to your question of whether the Court should allow
21 her to file a motion.

22 THE COURT: I mean perhaps what you're saying is,
23 the whole thing is a futile exercise because in the end, even
24 if she filed it timely her -- her late filing is excused on
25 grounds of excusable neglect. Her administrative expense
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1 claim is going to have to be denied because it's not properly
2 an administrative expense claim under the law, right?

3 MR. SWANSON: That is correct, Your Honor.

4 THE COURT: So I guess you're arguing why go through
5 all of this exercise when that's where it's going to end up.

6 MR. SWANSON: That was the question I was trying to
7 respond to, Your Honor.

8 THE COURT: Okay. Well, now you know Ms. Reed of
9 course hasn't had herself notice of that argument, proper
10 notice of that argument.

11 MR. SWANSON: Sure.

12 THE COURT: And an opportunity to respond to it. So
13 it's a little hard and I think in fairness -- there's fairness
14 and notice problems with me making a ruling like that that's
15 made when the argument was made right the first time at the
16 hearing, particularly in the case of a pro se claimant.

17 So what do you think is the most efficient way to move
18 this forward toward an ultimate decision on this
19 administrative expense claim? Do you want for example -- so I
20 guess for these reasons, is what I'm saying is, I'm not
21 willing to rule in favor of your futility argument today for
22 notice reasons.

23 MR. SWANSON: Sure.

24 THE COURT: Ms. Reed has to have to respond to that

25 before I can rule on that. Should I give her that chance and
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1 then at the same time tell her -- give her a deadline to file
2 the motion to extend the deadline, the January 26th deadline to
3 January 30 after the fact on the grounds of excusable neglect?
4 You know, what -- what's -- what is the most efficient way of
5 proceeding in your view?

6 MR. SWANSON: Well, in -- in my view I -- I think
7 the Court can -- the only thing in front of the Court today is
8 whether or not this administrative expense claim was timely
9 filed.

10 It wasn't timely filed. I think the Court can make a
11 ruling on that issue today. That there's been no motion to
12 excuse the late filing. To the extent that Ms. Reed files a
13 motion to excuse the late filing, then we can address it at
14 that point.

15 But I think today we're here on a very narrow issue,
16 whether this was timely filed. And -- and certainly I don't
17 think anything here today would establish excusable neglect.
18 To the extent that Ms. Reed wants to supplement this at -- at
19 a later date, the city will respond to that motion at that
20 time, but today it's a very narrow issue. It was not filed on
21 time. The Court can enter an order sustaining the city's
22 objection.

23 THE COURT: By the way I just -- I noticed -- I was
24 -- I was looking at the certificate of service that you cite

1 the servicing agent's certificate of service regarding the
2 notice of the effective date and the administrative claims bar
3 date and so forth, the December 10 notice.

4 And Ms. Reed's, I look at the page that you cited there
5 in Paragraph 3 of your objection to the certificate of service
6 exhibits. Ms. Reed's address is one of those that's redacted,
7 perhaps because she's police -- police?

8 MR. SWANSON: Correct, Your Honor.

9 THE COURT: It's redacted and unlike with -- with
10 what you filed regarding Sherell Stanley, there is no
11 affidavit from Michael Pakai or Pakai or anyone else from KCC
12 that says what address it is, or addresses it is that the
13 notice was sent to Ms. Reed.

14 So we all have a problem with the record that way I guess
15 as well. So all right. Anything else you want to say about
16 Ms. Reed's matter?

17 MR. SWANSON: If it -- if it would assist the Court,
18 Your Honor, we're certainly willing to obtain a similar
19 declaration from Mr. Pakai.

20 THE COURT: All right. Well, thank you. With
21 respect to the objection to the claim of Sheila Reed, as I
22 said on grounds of -- of -- of due process and proper notice
23 to Ms. Reed, the only issue before the Court today with
24 respect to the city's objection to her administrative expense
25 claim that was filed January 30, 2015 is the -- what the city

1 argued in its May 4, 2015 objection to her administrative
2 expense claim docket 9791, namely that the claim -- expense
3 claim should be denied because it was not timely filed. It
4 was filed January 30 rather than by the January 26, 2015
5 deadline established by the Court.

6 The so-called futility arguments, arguments essentially
7 that even if it was timely filed this is not properly
8 considered an administrative expense claim and should be
9 denied for that reason is an issue that's not before the Court
10 with respect to Ms. Reed's matter or expense -- administrative
11 expense claim today, so I'm not going to rule one way or the
12 other on that case, in the case of Ms. Reed.

13 Although the city is free to make that argument as part
14 of the further proceedings they're going to argue regarding
15 her -- the city's objection to her administrative expense
16 claim. The further proceedings are going to be number one,
17 and I'll prepare and enter an order reflecting these further
18 proceedings.

19 Number one, the city must file a supplement to its
20 objection. Well, let's do it -- scratch that. I'm going to
21 do a little different order.

22 Number one, Ms. Reed must file a motion seeking an
23 extension of the January 26, 2015 deadline to January 30, the
24 day on which she filed her administrative expense claim on the
25 grounds of excusable neglect. Which means on the ground that

1 among other grounds, possible grounds, the ground that she did
2 not actually receive the December 10, 2014 notice, document
3 number 8649.

4 That the city's servicing agent certified that it mailed
5 to her. The -- that was the notice of the confirmation, the
6 notice of the effective date of the plan, and the notice of
7 the administrative expense filing deadline, January 26, 2015.

8 That -- that motion must be supported by an affidavit or
9 a declaration under penalty of perjury by Ms. Reed swearing or
10 declaring under penalty of perjury that she did not receive in
11 the mail that notice.

12 Ms. Reed, I think to -- to help matters, help move
13 matters along and facilitate matters, I will cause to be
14 printed while you're still here today a copy of the December
15 10 notice that I've been talking about. So you will now have
16 it and you can look at it and you'll know what notice we're
17 talking about.

18 MS. REED: Yes, Your Honor.

19 THE COURT: When I'm -- when I'm talking about this
20 notice that had in it Paragraph 7, the January 26, 2015 filing
21 deadline. So I'll ask my courtroom deputy to print that
22 please. It's docket 8649, the seven -- eight page notice.
23 And we'll get that to you. So don't leave until we can give
24 you that copy.

1 THE COURT: So that's number one. And I want to set
2 a deadline for Ms. Reed to file that motion, such a motion if
3 you're going to. Ms. Reed, do you want -- is seven days from
4 now enough time, June 10 to -- to do that?

5 MS. REED: Yes, Your Honor.

6 THE COURT: All right. So June 10, 2015 will be the
7 deadline for Ms. Reed to file such a motion. The city, if she
8 does timely file such a motion, the city must file a response
9 to it no later than -- is June 17 enough time, Mr. Swanson?

10 MR. SWANSON: Yes, Your Honor. Thank you.

11 THE COURT: June 17, 2015. As far as part of that
12 response if you wish to Mr. Swanson, and I assume you will
13 from what you've argued, you will -- you may want to put in --
14 include an affidavit from the servicing agent that gives the
15 actual address, that that notice was mailed to -- for Ms. Reed
16 here.

17 If you think for security reasons that -- that such
18 document should be filed in redacted form or under seal,
19 because you don't want to on the public record the address of
20 Ms. Reed, that's fine. So what I'll say is that that response
21 may be filed under seal.

22 Actually the exhibit, the KCC affidavit or declaration
23 may be filed under seal so as not to make part of the public
24 record the address of Ms. -- Ms. Reed here.

1 THE COURT: Yeah.

2 MR. SWANSON: I believe when we file something under
3 seal we need a -- a Court order. So if you could put -- put
4 that in the order setting these deadlines, I believe we can
5 show that to the Court clerk.

6 THE COURT: Yes, I will. I'll put that in the
7 order.

8 MR. SWANSON: Okay. Thank you.

9 THE COURT: And I'm only talking about that -- that
10 exhibit.

11 MR. SWANSON: Exactly.

12 THE COURT: Not the rest of what you file by June
13 17th. All right. Then Ms. Reed then may file a reply to the
14 city's response no later than June 24, 2015.

15 The city may include in its response to this motion,
16 anticipated motion from Ms. Reed as one of its arguments for
17 denying the motion to extend the deadline that it would be
18 futile to do so because the claim is not properly brought as
19 an administrative expense claim on the merits in any event.

20 So you -- you can raise that argument in writing and that
21 will be sufficient notice to Ms. Reed of the argument. She
22 can then respond to it in the reply that she's going to have
23 the right to file by June 24th.

24 Then -- hold on one second. I'd like to set a further

25 hearing date on the -- the city's objection to the claim and
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1 also a hearing date now in advance on the anticipated motion
2 that Ms. Reed will file, both.

3 We have a hearing date coming up on July 22, but there's
4 a growing list of matters for that date. I'd like to do this
5 -- this one on the week before, July 15 at 1:30. Is that a
6 date and time that works on your calendar, Mr. Swanson?

7 MR. SWANSON: Your Honor, if I may have a second.

8 THE COURT: Sure.

9 MR. SWANSON: Yes, Your Honor, that's acceptable to
10 the city. Thank you.

11 THE COURT: Ms. Reed, any reason you couldn't make a
12 July 15 hearing at 1:30 here?

13 MS. REED: No, Your Honor, I work midnights.

14 THE COURT: By the way Ms. Reed, I noticed that
15 you've got an address that's listed on the administrative
16 expense claim that you filed on January 30, 336 Pinecrest,
17 Ferndale, Michigan 48220. Is that your current address?

18 MS. REED: Yes, Your Honor.

19 THE COURT: All right. Well, that's already in the
20 public record, so there's no need to file this exhibit from
21 the servicing agent under seal, Mr. Swanson. So I'll -- I
22 won't put in any stuff about that in the order.

23 So, all right. So I'm going to prepare and enter an
24 order that reflects all of these further proceedings. And Ms.

1 whole thing I just went through, you know, just -- I would --
2 I would urge you to take a look at the order that will lay
3 everything out, the sequence exactly what further proceedings
4 are in the order that I'm going to prepare and enter.

5 And Ms. Reed, in your case you should get a copy of that
6 order from our clerk's office within the next few days in the
7 mail.

8 MS. REED: Yes, Your Honor.

9 THE COURT: So read that and have you given her the
10 notice yet? Okay. We're handing -- my clerk is handing you
11 the copy of the notice, the December 10, 2014 notice. In
12 particular at Paragraph 7A on Page 7 is the -- the provision
13 that has the January 26, 2015 deadline in it.

14 So that's for your reference. And then as I said you'll
15 get the order from today's hearing in the mail and we'll have
16 further proceedings. If the parties manage to for any reason
17 to settle this dispute of course you'll -- you'll let the
18 Court know by some sort of stipulation and order that you
19 submit, I'm sure. But otherwise we'll look for the -- the
20 further matters to be filed.

21 I will say in the order that I'm going to enter that if
22 -- if Ms. Reed does not comply with the order by filing this
23 motion to extend the deadline with an affidavit or declaration
24 of penalty of perjury attached by the deadline of June 10, the
25 Court will enter an order sustaining the city's objection on

1 grounds of an untimely filing.

2 So Ms. Reed, it is important that you get this motion
3 filed by that deadline if you want to keep pursuing this
4 claim, this administrative claim.

5 MS. REED: Yes, Your Honor.

6 THE COURT: All right. So Ms. Reed, any questions
7 about what we're doing going forward with this?

8 MS. REED: No, Your Honor.

9 THE COURT: Same thing to you, Mr. Swanson. Any
10 questions?

11 MR. SWANSON: Yes, Your Honor. You mentioned an
12 evidentiary hearing. Should the city be prepared for an
13 evidentiary hearing on -- on July 15th?

14 THE COURT: No.

15 MR. SWANSON: No, okay. Thank you.

16 THE COURT: No. Before I'm convinced that we need
17 an evidentiary hearing I want to see what gets filed.

18 MR. SWANSON: Thank you.

19 THE COURT: And what it's -- what these further
20 filings say. We may need one. If -- if we do, I would expect
21 to schedule such an evidentiary hearing in the fairly near
22 future after July 15. So that this wouldn't drag on much
23 longer than that before we can have any necessary evidentiary
24 hearing and I can make a -- an ultimate decision on the

25 timeliness issue. You know, we're also going to be dealing at
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1 the July 15 hearing, I assume also with the futility argument
2 as well.

3 MR. SWANSON: Yes, Your Honor.

4 THE COURT: So I have not -- I don't see -- I'm not
5 convinced we're going to need an evidentiary hearing
6 ultimately yet, but it may end up there.

7 MR. SWANSON: Thank you.

8 THE COURT: Any other questions, Mr. Swanson?

9 MR. SWANSON: No, Your Honor. Thank you.

10 THE COURT: All right. Thank you.

11 The next matter then is -- are the -- there's two matters
12 dealing with the administrative expense claim filed by Sherell
13 Stanley. One is the -- the application for administrative
14 expense filed by Sherell Stanley.

15 And then the other -- the other matter -- to which the
16 City of Detroit has objected and -- and the other is Sherell
17 Stanley's motion filed on May 21 to extend the deadline for
18 filing of an administrative expense claim. Essentially
19 arguing excusable neglect for Ms. Stanley's not having filed
20 her administrative expense claim until February 6th, 2015 after
21 the January 26th deadline. So you are?

22 MS. STANLEY: Sherell Stanley, sir.

23 THE COURT: All right. So -- and of course Mr.
24 Swanson for the city. So Ms. Stanley, you reviewed the city's
25 objection to your motion to extend the deadline I assume
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1 right?

2 MS. STANLEY: Yes, sir.

3 THE COURT: Okay. So let me start with Mr. Swanson
4 and hear you -- what you'd like to argue on these -- both of
5 these matters, the objection to the administrative expense
6 claim and the city's objection to Ms. Stanley's motion to
7 extend the deadline. And then we'll hear from Ms. Stanley on
8 this. Mr. Swanson.

9 MR. SWANSON: Yes, Your Honor. In this case with
10 respect to Ms. Stanley, we do have an affidavit from Mr. Pakai
11 which indicates this notice was served at least once on Ms.
12 Stanley.

13 THE COURT: Yes. I reviewed that -- that
14 certificate of service that you're referring to. You've cited
15 that in your -- I believe in your brief opposing the motion to
16 extend, right?

17 MR. SWANSON: Yes, Your Honor.

18 THE COURT: Yes. I did review that. It looks like
19 from the pages you cited and the exhibit to that certificate
20 of service, it looks like it was -- it might have been served
21 in the three or four different mailings, but all to that same
22 P.O. Box 321032, Detroit, Michigan, right?

23 MR. SWANSON: That's correct, Your Honor. In this
24 case it was mailed at least once and as Your Honor indicates,
25 probably more than once.

1 THE COURT: And that was mailed on -- on or before
2 December 16, 2014 according to the certificate of service.

3 MR. SWANSON: That's correct, Your Honor.

4 THE COURT: Okay. All right. Go ahead.

5 MR. SWANSON: Ms. Stanley also admits to receiving
6 the plan and submitting a ballot on her unsecured claim. Your
7 Honor, the plan contained these same deadlines.

8 The city thus provided Ms. Stanley with notice at least
9 three or four times of these deadlines. And -- and the city
10 asserts that no excusable neglect could possibly exist when
11 you provide someone notice of a deadline at least three or
12 four times.

13 THE COURT: Well, what notice other than the
14 December 10 notice notified Ms. Stanley of the -- what the
15 effective date of the plan was and/or what the -- therefore
16 based on the effective date, what the actual deadline was for
17 filing administrative expense claims.

18 MR. SWANSON: Sure.

19 THE COURT: I know the December 10 notice did that.
20 Isn't that the only one?

21 MR. SWANSON: Well, Your Honor, the -- the plan
22 obviously contains the provision which provides that
23 administrative expense claims must be filed within so many
24 days of the effective date. At that point it was widely

1 The city's plan had gone effective thus there was notice that
2 something had to be done. And it would --

3 THE COURT: So you're relying on news media reports?

4 MR. SWANSON: Your Honor, we're relying on the
5 certificate of service and the notice that was sent to her
6 house.

7 THE COURT: Well, I understand that. But --

8 MR. SWANSON: Yeah.

9 THE COURT: But my question is, if you're arguing
10 that there were other ways that she learned or was notified of
11 the January 26th, 2015 deadline, I want to know what you're
12 arguing. If you're saying because she should have known it
13 from the news reports, what -- what news reports? -

14 MR. SWANSON: Well, there was no specific notice of
15 the effective date other than the December 10th notice that
16 Your Honor indicates. There was certainly a -- a plan that
17 was sent to her which said that administrative expense claims
18 need to be filed within a certain number of days. And I
19 believe if you look at the version of the plan that always
20 range from 30 to 45 days.

21 So although the effective date was a moving target, there
22 was certainly several notices provided that something would
23 have to be done after the bankruptcy case was concluded. And
24 that was sent to Ms. Stanley as well.

1 to the effective date was a notice of effective date. And
2 that was mailed to Ms. Stanley three or four times. Thus
3 there -- there is no excusable neglect.

4 THE COURT: Well, three or four separate mailings on
5 the same date presumably by roughly on or before December 16,
6 right?

7 MR. SWANSON: Correct.

8 THE COURT: All to this -- this P.O. Box.

9 MR. SWANSON: Yes.

10 THE COURT: Right?

11 MR. SWANSON: Yes.

12 THE COURT: Okay. Go on.

13 MR. SWANSON: And -- and in response to Ms.
14 Stanley's motion to excuse untimely filing, the city did raise
15 the futility argument that this is not an administrative
16 expense claim in a Chapter 9 case. It is not a cost of
17 administration. There is no estate, thus there can be no cost
18 to preserve the estate.

19 And it also appears that Ms. Stanley's claim is based on
20 events which occurred entirely before the filing of the
21 bankruptcy case. Thus all of these -- all -- the entire claim
22 is an unsecured claim to the extent it's valid and Ms. Stanley
23 has filed unsecured claims in this case.

24 THE COURT: Wait a minute. Wait a minute. I missed

1 motion?

2 MR. SWANSON: I did not -- I did not raise the
3 argument that it was. I raised the argument that this is not
4 the type of claim that is an administrative claim.

5 THE COURT: Yeah, I -- I saw that. If -- if you're
6 also arguing that this is not an administrative expense claim
7 because it arose entirely pre-petition, I missed that. Is
8 that --

9 MR. SWANSON: No, I did not make that specific
10 argument.

11 THE COURT: Is there a basis for the Court to find
12 that based on what -- anything that's in the record?

13 MR. SWANSON: Your Honor could look at the
14 administrative expense claim filed by -- oh, I apologize, Your
15 Honor. Let me find it here.

16 THE COURT: There is --

17 MR. SWANSON: It is in the --

18 THE COURT: Perhaps you were thinking of the
19 discrimination charge that's attached to Ms. Stanley's
20 administrative expense claim is that -- is that it?

21 MR. SWANSON: I was -- actually, Your Honor, I can
22 refer to that, but I was thinking of the EEOC's administrative
23 expense claim where it says beginning in October of 2012.
24 That's when the discrimination occurred.

1 Stanley's charge it also talks about how this discrimination
2 occurred in the fall of 2012 which would be prior to the --

3 THE COURT: You're looking at her charge of
4 discrimination that's attached to the administrative expense
5 claim that she filed, docket --

6 MR. SWANSON: Correct.

7 THE COURT: -- 9189?

8 MR. SWANSON: Yeah, that's correct.

9 THE COURT: Is that right?

10 MR. SWANSON: Yes.

11 THE COURT: Okay. So that says since the fall of
12 2012 through November 2013 had been retaliated against subject
13 to different terms, et cetera. So it sounds like she's
14 alleging a continuing series of -- of sex discrimination
15 actions, retaliatory actions, some which occurred pre --
16 pre-bankruptcy petition, and some which occurred
17 post-petition, right?

18 MR. SWANSON: Agreed, Your Honor.

19 THE COURT: So at least to some extent, at least as
20 -- as alleged the -- the claim arose post-petition.

21 MR. SWANSON: Certain of the acts as alleged arose
22 post-petition.

23 THE COURT: We don't know to what extent, but to
24 some extent, right?

1 THE COURT: Okay. So -- all right. So go on, you
2 were saying.

3 MR. SWANSON: That -- that irregardless of when the
4 -- whether these acts occurred post-petition, this is not an
5 administrative expense in a Chapter 9 case. This is not a
6 cost of administration.

7 The city filed its objection to Ms. Stanley's motion last
8 weeks and the city had additional time to reply but it wanted
9 everything to be heard today for all parties' convenience,
10 raised this argument and -- and it is not an administrative
11 expense. That's the narrow issue we're here on today.

12 One was it filed on time. No, it was not filed on time.
13 Two, under -- could this conceivably be an administrative
14 expense. The answer is no. Thus the city asks this Court to
15 sustain its objection to both the administrative expense claim
16 and the motion to excuse late filing. Thank you.

17 THE COURT: One moment. You also made this same
18 futility argument in your objection that you filed to the
19 EEOC's motion.

20 MR. SWANSON: That's correct.

21 THE COURT: That's scheduled for hearing today to
22 excuse their late filing, right?

23 MR. SWANSON: That's correct, Your Honor.

24 THE COURT: Okay. And that was -- each of these

1 your objection to the EEOC's extension motion were filed May
2 29.

3 MR. SWANSON: That's correct, Your Honor.

4 THE COURT: Yeah. And you know, the reason the
5 motions are scheduled so quickly after that is because of me.
6 I saw that they were obviously related to the objection to the
7 administrative expense claims and the timeliness issue. So I
8 thought we ought to hear them all at the same time. And
9 that's the reason that those motions were scheduled for
10 hearing so quickly after Ms. -- or the EEOC and Ms. -- Ms.
11 Stanley would have received in the mail in her case the --
12 your response to her motion and this futility argument that's
13 in there as part of it.

14 Should I give Ms. Stanley and the EEOC an opportunity to
15 respond to that -- that argument before I rule on it?
16 Futility argument, I mean right now.

17 MR. SWANSON: That is fine with the city, Your
18 Honor, if the Court is inclined to give them additional time.
19 Based on this Court's ruling last week, the city believes it's
20 fairly clear that discrimination claims of any kind could
21 never constitute costs of administration in a -- in a Chapter
22 9 case. And --

23 THE COURT: I -- I have a vague recollection that
24 somebody ordered a transcript already of last week's hearing,
25 is that right?

1 MR. SWANSON: I believe that's correct, Your Honor.

2 THE COURT: Yeah. In any case Ms. Stanley and the
3 EEOC can listen to the audio of last week's hearing where this
4 issue came up and hear what I -- I ruled and what I said about
5 it.

6 Although it was kind of a very long hearing and it's
7 going to be kind of buried in there. Perhaps the thing to do
8 -- let me -- hold on one second. Yeah, the city ordered a
9 transcript of last Wednesday's hearing, the same day, whatever
10 the same day, Stephen LaPlante ordered it, I believe. A
11 couple of transcripts, yeah, he ordered docket 9889, no
12 transcript has been filed yet. Let's see.

13 He ordered an expedited transcript of the entire hearing.
14 So that's -- presumably that's going to be filed pretty
15 quickly, pretty soon, although it was about a four hour
16 hearing, so it's going to take a little bit of time to get a
17 transcript.

18 Perhaps the thing to do just to -- to fairly put the city
19 and Ms. Stanley and the EEOC all on sort of a level playing
20 field with respect to what I ruled last week during the
21 hearing last week on this futility subject, is to -- is for me
22 to once that transcript is filed, for me to pull out the --
23 the part -- the parts where I made rulings about this and --
24 and file that part as a memorandum that would go to the EEOC
25 and Ms. -- Ms. Stanley so they can read it and be aware in

1 that way of what I ruled previously before they respond to the
2 city's argument.

3 I think in fairness, I assume -- I don't think they were
4 here last week at the hearing. I -- I think perhaps in
5 fairness I'll let them have that transcript. Of course you
6 can see it also, exactly what I said on this subject and use
7 that in your further your argument as well if you want to do
8 that.

9 So, all right. One second. Okay. So this discussion
10 we've just been having has to do with this what I'll call this
11 futility argument. Did you want to say anything more about
12 the timeliness issue apart from the futility issue here?

13 MR. SWANSON: No, Your Honor. Thank you.

14 THE COURT: All right. Ms. Stanley, what would you
15 like to say about these matters?

16 MS. STANLEY: I would like to first thank the Court
17 for having us and giving us an opportunity to address this.
18 The city's objection to my motion by the way, I never received
19 either but for the EEOC having emailed it to me.

20 THE COURT: You never received what?

21 MS. STANLEY: I never received the city's objection
22 to -- to the motion.

23 THE COURT: The objection to --

24 MS. STANLEY: Via U.S. Mail anyway. I did receive

25 it from the --
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1 THE COURT: You mean the objection they filed last
2 week to your motion to extend the deadline?

3 MS. STANLEY: Yes, sir.

4 THE COURT: Oh, I see.

5 MS. STANLEY: Yeah.

6 THE COURT: Well, it was only filed on May 29 about
7 6:00 p.m. So --

8 MS. STANLEY: But I do have a copy, sir.

9 THE COURT: Yeah. That's last Friday, it was late
10 last Friday, so you may still get it in the mail. But you
11 have a copy you've reviewed it?

12 MS. STANLEY: Yes, sir.

13 THE COURT: All right. Go on.

14 MS. STANLEY: Okay. And I'd also like to say that
15 I'm -- I'm -- I'm not denying that the city mailed me the
16 correspondence, however I'm unable to confirm receipt. I was
17 out of town during that particular period in December and part
18 of January. And someone else was collecting my mail.

19 So I'd also like to say that the correspondence that I've
20 been receiving, I compile all of my correspondence regarding
21 this matter, the city's bankruptcy case that I receive anyway
22 and my EEOC claims in -- in one binder.

23 And I've gone through it and I have not found the notice
24 that the city has referred to. However, I did pull a copy of
25 it from the internet as I indicated in my motion.

1 Additionally, the correspondence --

2 THE COURT: Now the notice you're talking about now
3 is the December 10, 2014 notice?

4 MS. STANLEY: Yes, sir.

5 THE COURT: This -- the eight page notice?

6 MS. STANLEY: Yes, I believe that's how many pages
7 it is.

8 THE COURT: Yeah. Paragraph 7A of which had the
9 January 26, 2015 deadline in it?

10 MS. STANLEY: Yes, sir.

11 THE COURT: That notice. So you have that now, you
12 know what that notice says now. And you're saying what, that
13 you can't confirm that that was actually received in the mail
14 by you?

15 MS. STANLEY: Affirmed that. But I can't confirm
16 receipt. Again I compile all of my documents in this one
17 binder and I have yet to locate that other than the copy that
18 I procured and printed off from the internet. The
19 correspondence was --

20 THE COURT: Well, was -- as of December, last
21 December, was this P.O. Box that's listed for you the correct
22 address for your mail, P.O. Box 321032, Detroit, Michigan?

23 MS. STANLEY: Yes, sir.

24 THE COURT: 44238?

1 THE COURT: 44232, I guess.

2 MS. STANLEY: Strike that. What is my number there?

3 Post Office Box 321032, Detroit, 48232.

4 THE COURT: Yeah.

5 MS. STANLEY: Yes, sir.

6 THE COURT: Okay. So they -- the servicing agent
7 certified that on or before December 16, it mailed to you four
8 different copies of that notice all to that P.O. Box. And you
9 said somebody else was collecting your mail from that P.O. Box
10 in December?

11 MS. STANLEY: Yes, sir. I was -- again I was out of
12 town during that period and they were collecting the mail.

13 THE COURT: Who was collecting your mail?

14 MS. STANLEY: A friend of mine. Her name is Sharita
15 Black.

16 THE COURT: And then at some point you came back to
17 town and got your mail?

18 MS. STANLEY: Yes, sir.

19 THE COURT: From her.

20 MS. STANLEY: Yes, sir.

21 THE COURT: And when was that?

22 MS. STANLEY: That would have been sometime in
23 January, early January.

24 THE COURT: And from reviewing that pile of mail

25 you're saying you don't -- you didn't see in there and have
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1 not found anywhere in there or anywhere in your mail that you
2 received at this P.O. Box any copies of this December 10
3 notice.

4 MS. STANLEY: I -- not of the December 10 notice.

5 Many -- all of the correspondence that I've received from the
6 city anyway is -- is poorly marked. In that it doesn't
7 indicate that it's a -- a Court notice of any kind.

8 Like for example I have one here. That's from Alaska --
9 what was this, Alaska Avenue in -- in California. And -- and
10 most of them are coming from that address.

11 So it's very possible -- and I can get an affidavit if
12 the Court will grant me an adjournment from Ms. Black to
13 determine what she may have done with it if anything if it was
14 actually mailed and -- and received by her.

15 But again the -- the correspondence received from the
16 city regarding this matter is just not marked. You would
17 never know that it was related to a -- a Court proceeding
18 unlike correspondence I received from the Court that
19 specifically state that's a notification of a -- of a Court
20 proceeding.

21 So it's very possible she discarded it, I don't know.
22 But what I can tell you is that I cannot confirm receipt of
23 that correspondence.

24 THE COURT: It's possible Ms. Black discarded the

1 Box, is that what you're saying?

2 MS. STANLEY: I don't know. I would have to request
3 that the Court give me an opportunity to speak with her about
4 it considering again that the mail that I received from the
5 city regarding this bankruptcy case is poorly marked. But I
6 do know I never received it.

7 THE COURT: I'm not sure what you mean by that,
8 poorly marked. What do you mean?

9 MS. STANLEY: The envelopes that I've received
10 regarding this matter, all of them are just white in color and
11 just have a return address of this location on Alaska Avenue
12 in California.

13 THE COURT: Well, that's where the servicing agent
14 was mailing these things from. The servicing agent for the
15 city in this case is Kurtzman, Carson Consultants, LLC. I
16 believe they are in California.

17 MS. STANLEY: Okay.

18 THE COURT: But you -- you -- you would have gotten
19 a lot of mail in the case from the very same place.

20 MS. STANLEY: Well, I have received a -- a lot of
21 mail. But again, I -- I compile it all here and I -- I simply
22 don't have it here.

23 THE COURT: All right. So go ahead, what -- what
24 else did you want to say? Anything else?

1 indicating within its objection to my motion, that I was made
2 privy of the plan because of the vote that I submitted back in
3 July, that was well before December.

4 I voted in July and made the city -- I think that was the
5 second time that I brought the matter of my claim to the
6 city's attention. And that was in July of 2014. It wasn't
7 until apparently December that this was filed and I was not
8 aware of the effective date.

9 They also indicated -- they alluded to that I should have
10 been placed on notice somehow because of the media, however I
11 work the midnight shift and I don't have a lot of opportunity
12 to watch TV. So I -- I wasn't made aware of it until I was
13 apprised by the EEOC's office via electronic mail.

14 Also the city indicates in Paragraph 7 of its objection
15 that I provide no supporting -- no support with regard to the
16 mail not having been misrouted or some such, however I do
17 within my motion actually attach a correspondence that they
18 mailed to me that was apparently intended for Ms. Reed on
19 Pinehurst.

20 And I have another mailing that went out to one of my
21 associates who indicated that he didn't receive my mail, that
22 something that I sent to him until a month later and it was
23 all ripped up. And I can present that to the Court too if
24 given an opportunity to do that. So I do provide some support

1 and mismailing of these things.

2 Additionally, counselor has indicated in Paragraphs 11,
3 12 -- 11 and 12 of its objection to my motion, that this
4 bankruptcy case is -- is complex. It is complex.

5 And then on Page 5 it goes on to say that after
6 conducting a reasonable amount of diligence, it is justifiably
7 confused or uncertain as to where a particular transaction
8 giving rise to the claim is or is not subject to the bar date.

9 My response to that is, I totally agree that this matter
10 is complex, it is convoluted, and extremely confusing. Within
11 my application of administrative expense claim and in my
12 motion, I referred to the fact that I had notified the -- the
13 city on two different occasions and that was pursuant to that
14 paragraph, I think it's Paragraph 7 -- 7 within the notice
15 that says that if you file prior you would not be required to
16 file again. And I attached both my proof of claim which
17 clearly --

18 THE COURT: I don't know where Paragraph 7 says
19 that. What are you talking about?

20 MS. STANLEY: In Paragraph 7A, sir. General bar
21 date provisions except as --

22 THE COURT: Yeah. Where?

23 MS. STANLEY: Within the notice.

24 THE COURT: Yeah, where is that? What is the

1 MS. STANLEY: On Page 7.

2 THE COURT: Yeah, I see it. What --

3 MS. STANLEY: Okay.

4 THE COURT: What does it say that --

5 MS. STANLEY: Paragraph A there.

6 THE COURT: Yeah.

7 MS. STANLEY: Except as otherwise provided in sub
8 paragraph 7B or 7C below.

9 THE COURT: Right.

10 MS. STANLEY: Or any bar date order or other order
11 of the Bankruptcy Court that's previously filed requests for
12 payment of administrative claims must be filed and served on
13 the city no later than 45 days after the effective date. So
14 unless previously filed.

15 So again once I read that after pulling this document
16 from the internet, I was under the impression that I wasn't
17 even required to file an administrative expense claim. And
18 was just urged to do so by the EEOC, hence the reason I did.

19 THE COURT: Well, you didn't previously file an
20 administrative expense claim, you filed a proof of claim,
21 didn't you?

22 MS. STANLEY: I filed --

23 THE COURT: Previously?

24 MS. STANLEY: -- a proof of claim sir, that

1 the claim includes interest or other charges in addition to
2 the principal amount of the claim. And that's what --

3 THE COURT: You filed a proof of claim on a proof of
4 claim form with the -- in the case, didn't you?

5 MS. STANLEY: Pardon me, sir?

6 THE COURT: You filed a proof of claim.

7 MS. STANLEY: Yes, sir.

8 THE COURT: Back in 2014.

9 MS. STANLEY: Yes, sir.

10 THE COURT: In the bankruptcy case.

11 MS. STANLEY: Yes, sir.

12 THE COURT: So you filed both a proof of claim and
13 this application for administrative expense.

14 MS. STANLEY: Yes, sir.

15 THE COURT: All right. And the reference to 7A is
16 if you've previously filed a request for payment of
17 administrative claim you don't have to file it again. It
18 doesn't -- it's not referring to previously filing a proof of
19 claim on the proof of claim form.

20 But what you're saying is, that when you read this and --
21 and you're saying you didn't actually read this and -- and get
22 confused by it until well after -- until after the January 26
23 deadline, I guess. But at that point you were confused by it.

24 MS. STANLEY: Yes, sir.

1 MS. STANLEY: In that I thought it was inclusive of
2 this claim. And that again I didn't -- I was obviously
3 confused in that I thought this -- this phrase, or this --
4 this -- this sentence within the proof of claim meant that it
5 was all inclusive of -- of those claims and I would not be
6 required to -- to file an administrative expense claim. But
7 again I -- I went ahead just for good measure per the urging
8 of the EEOC office and filed it anyway.

9 THE COURT: Okay. What else did you want to say
10 then?

11 MS. STANLEY: And as a matter of good faith too.

12 THE COURT: Okay. What else did you want to say?

13 (Off the Record Comments)

14 THE COURT: All right. Go on, Ms. Stanley.

15 MS. STANLEY: Yes, sir. I want to say too that
16 until I filed my motion that the city didn't indicate that
17 there was any prejudice to them with regard to extending the
18 -- the time of the filing of administrative claim.

19 And that although the city indicates within their
20 objection that my claim is unfounded, is -- is based on
21 unfounded allegations. My response to that is that my EEOC
22 complaint is currently under investigation. It's a -- for
23 violations of my civil rights by my employer the City of
24 Detroit.

1 retaliation. It also includes some medical expenses and
2 illness that I have suffered because -- because of it. And
3 really that goes to whether or not too I would guess would
4 fall under -- or within the provisions of being an
5 administrative claim at all.

6 One last thing, sir, if you would. Okay. Just in
7 closing I just want to urge the Court to consider the true
8 intent of excusable neglect. And that it was intended to
9 excuse claimants like myself who number one, did not become
10 aware of the deadline until after the fact.

11 And number two, file just a mere week after the target
12 date and further that did not prejudice the -- the city, nor
13 did it allege or claim that it -- that it prejudiced the
14 city's case until now.

15 And finally, I've acted in good faith. Any
16 correspondence that I've personally mailed to the city with
17 regard to this matter, I have mailed certified to confirm
18 receipt. And I requested the same courtesy within my
19 application for administrative expense claims.

20 I'd like to add that -- I guess to reiterate that the
21 proceedings are complex and somewhat confusing for I think
22 anybody. And I've just -- I've navigated my way through this
23 as best I can and compiled these documents as best I can. And
24 that it's a matter based on the -- the standard actually as a
25 matter of equity, sir. And I request that the Court if you
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1 would, consider that and that my case is still under the --
2 under investigation. A lawsuit has not been filed in this
3 matter.

4 My case was filed -- my EEOC complaint was filed in
5 November of 2013 and it's still ongoing. And -- and in fact
6 has been delayed because of -- of the filing of the bankruptcy
7 by the City of Detroit. So everything is relative in -- in
8 that as a matter of equity this -- this claim is based on a
9 civil rights violation and I have not up until this point to
10 my knowledge anyway because of course I wouldn't know if I
11 didn't receive anything, but to my knowledge I have not missed
12 any other deadlines, so there's no pattern here.

13 And that's all I have for you, sir. Just that I would
14 just like to urge the Court to consider the actual standards
15 of excusable neglect and allow this matter to go forward in
16 granting my motion.

17 THE COURT: All right. Thank you. Mr. Swanson, did
18 you want to briefly reply?

19 MR. SWANSON: Yes, Your Honor. The one consistent
20 thing that exists here, Your Honor, the city has mailed
21 notices and proof of claim deadline to Ms. Stanley. She filed
22 two proofs of claim. Mailed the plan. She filed a ballot on
23 the plan.

24 Mailed this administrative expense notice. Notice of

25 effective date four times to her. What else could the city
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1 have done.

2 THE COURT: Part of what you're saying now I think
3 with this point you just made is that this is -- these facts
4 are -- are circumstantial evidence supporting the proposition
5 that -- that Ms. Stanley actually did receive in her P.O. Box
6 the notice, the December 10 notice that was mailed to her by
7 the noticing agent.

8 MR. SWANSON: That's correct, Your Honor. And I --
9 I don't think -- you know, Ms. Stanley said someone else was
10 in charge of her mail. She didn't raise this in -- in her
11 motion. And she wanted this other person to file an affidavit
12 or something, you know, the time has passed.

13 We -- we mailed this to her four separate times. If she
14 had someone else in charge of her mail at this point that's --
15 that frankly is not the city's issue, that's Ms. Stanley's
16 issue. The city did everything that was required by the rules
17 and the plan, sent the notice to her, and she didn't file
18 anything.

19 THE COURT: All right. Anything else?

20 MR. SWANSON: No, Your Honor.

21 THE COURT: All right. Thank you.

22 Well, in these two matters involving Sherell Stanley, the
23 two matters being the city's objection to Ms. Stanley's
24 application for administrative expense claim that was filed

1 related thing being Ms. Stanley's motion filed May 21, 2015
2 docket 9875 for an extension of the January 26, 2015 deadline
3 to the date that she actually filed the administrative expense
4 claim, February 6th based on excusable neglect.

5 I -- I would -- I want to say -- start by saying the
6 following. The -- the -- there's really two -- two main
7 levels to the city's argument here as I perceive it.

8 One is the objection to the claim that the -- the
9 administrative expense claim on the ground that it wasn't
10 timely filed. And related to that in the city's arguments
11 opposing the debtor's -- or the creditor's claim -- or
12 extension motion which are there is not excusable neglect.
13 The Court should not find excusable neglect and should not
14 essentially excuse the late filing of the administrative
15 expense claim and -- and this is also of course further
16 support of the city's argument that the claim should be denied
17 as untimely. That's level one.

18 Level two is these what I've referred to earlier in this
19 hearing as futility argument which is the argument the city
20 has made -- first made with respect to Ms. Stanley's
21 administrative expense claim in their objection filed last
22 Friday, May 29 at docket 9909 at Page 8 and Paragraph 21.

23 Arguing that even if Ms. Stanley's -- even if the Court
24 were to excuse Ms. Stanley's late filing of her administrative
25 expense claim on grounds of excusable neglect, it would be
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1 futile to do so. It would be a waste of time because even if
2 it's deemed as timely filed Ms. Stanley's administrative
3 expense claim must be denied because it is not properly under
4 the law to be treated as an administrative expense claim.

5 Now I'll -- I'll just refer to that in shorthand -- for
6 shorthand purposes as the futility argument. With respect to
7 the arguments having to do with timeliness of the filing of
8 the proof of claim, in the case of Ms. Stanley's claim and her
9 motion, a -- an important, very important consideration in
10 determining whether Ms. Stanley has demonstrated excusable
11 neglect for the late filing of her administrative expense
12 claim is whether in fact the December 10, 2014 notice, docket
13 8649 which included in Paragraph 7A, the notice of the January
14 26, 2015 deadline for filing administrative expense claims was
15 actually received at Ms. Stanley's P.O. Box to which the
16 city's servicing agent has certified it mailed four copies of
17 the notice, P.O. Box 321032, Detroit, Michigan 48232 which Ms.
18 Stanley admits is her correct mailing address, both December
19 2014 and -- and -- well, in December 2014 when KCC the
20 servicing agent mailed the December 10 notice to that address.

21 That's an important issue because if the Court ultimately
22 finds that the notice, the December 10 notice of the January
23 26 deadline was not actually received in P.O. Box mailing
24 address for Ms. Stanley, then the Court most likely would find
25 excusable neglect that would excuse the late filing of the

1 administrative expense claim under Federal Bankruptcy Rule
2 9006 at least unless there was some other evidence that Ms.
3 Stanley had actual knowledge before January 26 of that
4 deadline, none of which is -- is apparent to the Court from
5 the parties' arguments so far.

6 So the issue -- an important issue will be -- would be
7 with respect to the timeliness issue and the motion filed by
8 Ms. Stanley, whether in fact that notice actually was received
9 at her P.O. Box.

10 If it was received at that P.O. Box and because of
11 actions of Ms. Black, or Ms. Stanley or anyone else, it was
12 later lost or for some reason never read by Ms. Stanley, that
13 is Ms. Stanley's problem, it is not the city's problem.

14 And the issue of excusable neglect will -- will -- may
15 well come out the other way. That is the Court may well
16 reject the excusable neglect argument and find that the filing
17 of the administrative expense claim was untimely and that
18 untimeliness is not to be excused.

19 But it -- it really is an important issue which the Court
20 cannot make a finding on yet based on the present record. And
21 I do want to just briefly describe a in bit -- in a bit more
22 detail perhaps than what I've alluded to and described in the
23 hearing regarding Ms. Reed's claim earlier this afternoon
24 about the presumption that arises with respect to items that
25 are mailed.

1 The case I referred to earlier is a 6th Circuit case of
2 Bratton, B-r-a-t-t-o-n v the Yoder Company, In Re: The Yoder
3 Company, U.S. Court of Appeals for the 6th Circuit, a decision
4 from 1985 reported at 768 F 2d 1114.

5 In that case the 6th Circuit held that under the federal
6 common law there is a presumption that an item properly mailed
7 was received by the addressee. According to the 6th Circuit,
8 and this is at Page 1118 of the Court's opinion in the Yoder
9 case, "the presumption arises upon proof that the item was
10 properly addressed, had sufficient postage, and -- and was
11 deposited in the mail".

12 Once that presumption arises according to the Court in
13 the Yoder case, it may be rebutted and such rebuttal may
14 consist of -- of the testimony of non-receipt of the addressee
15 that they in fact did not receive it. That -- that testimony
16 if it is -- if it is given is sufficient alone to rebut the
17 presumption of receipt that arises under this common law
18 presumption.

19 There is other ways the presumption can be rebutted. In
20 general what's required to rebut the presumption of receipt is
21 to introduce -- the addressees introduce in evidence which
22 would support a finding of the non-existence of the presumed
23 fact, that is of the non-receipt.

24 Now the 6th Circuit held that once that presumption of

1 addressee that the item was in fact not -- not received, then
2 the presumption has no probative effect any longer under
3 federal evidence Rule 301 and the burden remains where it was
4 to begin with on the party asserting non-receipt with the --
5 to prove the item was not received. So the burden in this
6 instance would be on Ms. -- if she could rebut the presumption
7 of receipt, she still would have the burden of proof proving
8 -- and burden of persuasion proving that she in fact did not
9 receive in her P.O. Box this December 10 notice.

10 I -- I -- I've walked through these aspects of law
11 because I want the parties to be -- both sides to be aware of
12 my view at least of what the 6th Circuit case law is that
13 governs and is binding on this Court regarding this
14 presumption that's sometimes referred to as the mailbox rule.

15 And it does -- it is clear from the certificate of
16 service that was filed on December 29, 2014 at docket number
17 8970 in this bankruptcy case that Kurtzman, Carson
18 Consultants, the city's noticing and servicing agent did serve
19 on or before December 16, 2014 by first class mail, the
20 December 10 notice to Ms. Stanley at least four copies of it,
21 separate copies of it, to Ms. Stanley's address, the P.O. Box
22 that I mentioned earlier.

23 And so based on that the presumption of receipt by Ms.
24 Stanley at her P.O. Box of that notice does arise. It is a
25 rebuttable presumption as I said but it has to be rebutted
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1 with evidence which may include testimony from Ms. Stanley or
2 other evidence that in fact it -- that notice -- no copy of
3 that notice was ever received at her P.O. Box.

4 The -- the notice itself the December 10 notice docket
5 8649 at Page 7, Paragraph 7A in my view clearly gives notice
6 and says -- informs the reader that January 26, 2015 was the
7 deadline to file all requests for payment of administrative
8 claims and there's nothing confusing or misleading, or unclear
9 about the language in that paragraph in my view.

10 And it's also clear and clearly says that if a claim,
11 administrative claim is not filed by the January 26 deadline,
12 that such an administrative expense claim would be forever
13 barred against -- and the claimant could not assert such
14 administrative claims against the city or its property.

15 So this issue of receipt is -- is an important issue
16 having -- with respect to the timeliness of facets of this
17 dispute. And the further proceedings that I'm going to order
18 will be geared in part toward moving the -- this dispute of
19 this matter of this issue of receipt and timeliness forward
20 toward an ultimate decision by the Court on that issue.

21 I'm not making an ultimate decision on that issue today.
22 I'm simply ruling that the law is what I have explained it so
23 far that it is today.

24 With respect to this futility -- futility issue, I will
25 consider that issue as another possible ground and make a

1 ruling on it with respect to the -- the city's arguing that as
2 a ground -- another ground for objecting to the administrative
3 expense claim here of Ms. Stanley. But I -- I will give, and
4 I think it's fair to say, I need to give, and certainly want
5 to give Ms. Stanley a fair opportunity to file a written
6 response to that argument.

7 Again that argument is found in writing in Paragraph 21
8 on Page 8 of the city's response to Ms. Stanley extension
9 motion. And that response by the city was filed last Friday,
10 May 29, docket 9909. Ms. Stanley has said in today's hearing
11 that she did not receive a copy of that in the mail yet, but
12 that she did otherwise in a different way obtain a copy of
13 that and review it.

14 The further proceedings then I'm going to order, and I'll
15 prepare and enter an order reflecting this, are the -- the
16 following. First, I will order that Ms. Stanley must file a
17 reply in support of her motion for extension of the January 26
18 deadline which must exclude -- include, whatever response Ms.
19 Stanley wishes to make to the city's -- what I've referred to
20 as the city's futility argument. And which also must include
21 as an attachment to the reply, an affidavit or declaration
22 under penalty of perjury, one or the other, that from Ms.
23 Stanley and from any other person that Ms. Stanley wishes to
24 have such an affidavit or declaration from, for example her
25 friend Ms. Black in support of any argument she wishes to make

1 that she did not receive at her P.O. Box the December 10, 2014
2 notice that I referred to earlier.

3 In order to rebut the presumption that she did receive
4 that document at that P.O. Box, as I said discussing the Yoder
5 case and the mailbox rule and the presumption of receipt, Ms.
6 Stanley does have the burden of coming forward with testimony
7 or evidence tending to show that she did not receive it. And
8 so I'm requiring an affidavit or a declaration under penalty
9 of perjury at this point at a minimum from her on that subject
10 if she wants to persist in any argument that she did not
11 receive the December 10 notice.

12 Now, as I said earlier in the hearing, in fairness to Ms.
13 Stanley so that she is aware of what I have ruled a week ago
14 and during the -- as part of the proceedings and during the
15 long hearing that I had a week ago today on May 27 on other
16 matters in this case, that -- that the city is arguing
17 supports their futility argument.

18 I'm going to obtain an excerpt of the transcript of the
19 May 27 hearing that the parts that -- that contain rule -- any
20 rulings by me during that hearing on this subject, or that are
21 relating to this subject and file that excerpt of the
22 transcript as a -- a -- a memorandum relating to these matters
23 in the hearing today and see that Ms. Stanley is mailed a copy
24 of that excerpt from the transcript so that she will be aware
25 of that before she has to file a -- her reply in support of

1 the -- her -- her extension motion before she has to respond
2 in writing then to the futility argument.

3 So I will do that. The transcript has not been filed yet
4 but I expect that I will be able to get my hands on at least
5 that excerpt of the transcript within the next few days. And
6 I get that out.

7 So what I have in mind is -- in terms of scheduling is to
8 give for this reply that Ms. Stanley is being required to file
9 that I have described here, I have in mind giving her two
10 weeks from today which would be June 17, 2015 as the deadline
11 to file that reply. So Ms. Stanley, that will be your
12 deadline for filing this reply that I have been describing.
13 And -- and I'm going to spell this out in a written order that
14 I'm going to prepare and enter and which our clerk will mail
15 to you and you should receive within the next few days in the
16 mail. And that P.O. Box that we've been talking about is
17 still your permanent mailing address.

18 MS. STANLEY: Yes, sir.

19 THE COURT: All right. So keep your eye on that.
20 You'll get a -- there will be a written copy of this order.
21 The order will be filed, if not today, no later than tomorrow.
22 If you have access to the docket through -- over the internet
23 some way, you can -- you'll be able to see the order and pull
24 it up that way as well for yourself. But in any case it's
25 going to be mailed to you.

1 The further provision of the order I'm going to prepare
2 then is, I will allow the city to file a response to this
3 reply that Ms. Stanley is due to file no later than June 17.
4 Mr. Swanson, is one week enough time after June 17 for that?
5 Or do you want more?

6 MR. SWANSON: Yes. My son will be born maybe the
7 day before that, so I would request maybe another week.

8 THE COURT: Oh. No, no problem. So that -- another
9 week -- and so it will be two weeks after Ms. Stanley's
10 deadline. So that would be July 1.

11 MR. SWANSON: Thank you, Your Honor.

12 THE COURT: Of 2015. And congratulations on your
13 upcoming son --

14 MR. SWANSON: Thank you.

15 THE COURT: -- being born. Actually I have a
16 grandson who was born on June 24th.

17 MR. SWANSON: The --

18 THE COURT: So he has a birthday that -- that day,
19 the 24th. But that's totally beside the point here. But
20 anyway so that will be the deadline for the city's response.
21 And then I'm going to set a further, and this will be a
22 non-evidentiary hearing at this point, further hearing on
23 these matters, both the matters that we've heard today
24 regarding Ms. Stanley for July 15, 2015 at 1:30 p.m. Ms.

25 Stanley any reason you could not -- cannot be here at that
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1 further hearing on that date and time?

2 MS. STANLEY: Sir, I don't have a calendar in front
3 of me. What -- what date?

4 THE COURT: July 15, it's a Wednesday at 1:30 p.m.

5 MS. STANLEY: Wednesday. That should be fine.

6 THE COURT: All right. So I'll do this order. It's
7 a little complicated but the order will spell everything out
8 hopefully in clear language and will be clear to everyone once
9 -- when you read it. And we will proceed from there.

10 So really the issues going forward continue to be the
11 timeliness issue raised by the city and the further
12 proceedings on that. And the futility argument raised by the
13 city in what they filed last Friday. Those are going to be
14 the two issues going forward and you know, within those
15 issues, especially timeliness issues of course there are a
16 number of arguments and sub issues. Those are laid out in the
17 papers filed by the parties already I think.

18 So that's it for today on these matters involving Ms.
19 Stanley, although I -- I did notice that -- with respect to
20 the EEOC administrative expense claim which we're going to
21 hear about next, one of the persons that the EEOC filed an
22 administrative expense claim about -- for is Ms. Stanley.

23 So to that extent that Ms. Stanley is involved at least
24 somewhat in -- in that matter. But we're going to hear that

1 MS. STANLEY: Sir, as a point of clarification. The
2 excerpt from the transcript you said that that's going to be
3 made available?

4 THE COURT: My intention is to cause a copy of that,
5 once it's filed, to be mailed to you in time so that you have
6 it in time before -- before you have to file your reply brief.

7 MS. STANLEY: Okay.

8 THE COURT: Responding to, among other things
9 responding to the futility argument. So that's -- that's my
10 game plan on that.

11 MS. STANLEY: Okay.

12 THE COURT: Does that answer your question?

13 MS. STANLEY: Yes, sir. Thank you.

14 THE COURT: All right. Thank you.

15 So then we come to the EEOC related matters. And that is
16 the city's objection to the EEOC's administrative expense
17 claim. And then also the what I've construed at least in part
18 as a motion by the EEOC to docket 9139 to retroactively extend
19 the deadline for filing the administrative expense claim to
20 the date on which the EEOC filed that which was January 30,
21 2015. So Mr. Swanson, let's start with you on this one.

22 MR. SWANSON: Sure, Your Honor. And -- and just to
23 be clear while Ms. Stanley is still in the courtroom. The --
24 the city obviously disputes the underlying allegations. So if
25 -- if there was no futility and the Court found that it was
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1 timely, the city still disputes that the claim is actually
2 valid. But I just wanted to -- to make sure that the Court
3 was aware of that.

4 With respect to the EEOC, this is very similar to Mrs.
5 Stanley in that it was mailed to the EEOC. The difference
6 here is, Your Honor, is that the EEOC admits that it received
7 the notice.

8 THE COURT: The December 10 notice.

9 MR. SWANSON: The December 10 notice.

10 THE COURT: Yeah.

11 MR. SWANSON: The EEOC like Ms. Stanley was an
12 active participant in the bankruptcy case. The EEOC filed
13 numerous proofs of claim. The EEOC cast nine ballots in
14 opposition to the plan. And thus was very familiar with the
15 procedures, the way the mail was received, dates and deadlines
16 that needed to be followed.

17 Nevertheless the EEOC did not file its administrative
18 expense claim in a timely fashion, it filed late. The city
19 does not believe that excusable neglect has been shown. The
20 cases cited by the EEOC are distinguishable because they -- in
21 those cases a party's active as soon as they realize that they
22 have missed a deadline and file a proper motion with the Court
23 to excuse the late filing.

24 Here that didn't occur, Your Honor. The EEOC filed its

1 or brief to excuse the late filing until four months later.
2 None of the cases cited by the EEOC have facts that are even
3 close to -- to -- to the facts present here. Thus the city
4 does not believe the Court under existing precedent even
5 assuming everything the EEOC said was true, could make a
6 finding of excusable neglect.

7 The city also reiterates that it would be futile to allow
8 a late filing here because the claims asserted by the EEOC in
9 its application are not administrative expenses in a Chapter 9
10 case. Thank you, Your Honor.

11 THE COURT: All right. Thank you. Mr. Price, what
12 would you like to say about these matters?

13 MR. PRICE: Yes, Your Honor. Dale Price on behalf
14 of the commission. Yes, it's true we did get a copy of the
15 letter.

16 THE COURT: The December 10 notice you mean?

17 MR. PRICE: The December 10th notice. We did find
18 that. It was not logged in to our system. We found it two
19 weeks ago.

20 We have a system by which correspondence comes in and
21 it's added to a mail log which is if we get mail a mail log is
22 emailed out every day to all the attorneys in the office.
23 There is no reflection that we ever got -- it was never logged
24 in, it was never time stamped. I can't say when we got it,
25 but yes we did get it.

1 The January 29th which --

2 THE COURT: Is it fair to say from what you just
3 said therefore that the EEOC cannot prove and has no evidence
4 that it did not receive the December 10 notice back in
5 December.

6 MR. PRICE: I can't prove it, Your Honor, no. I
7 can't say when we got it. I honestly can't say one way or the
8 other.

9 THE COURT: So really then what it comes down to is
10 your -- your argument that you personally weren't consciously
11 aware of that -- of that notice and that deadline until I
12 guess the day before you filed your -- the January 30, EEOC
13 administrative expense claim.

14 MR. PRICE: That's correct, Your Honor. That was
15 the date that I became aware of the -- the deadline. I
16 emailed out to all of our then claimants. By the way we do
17 have -- just to clear up one thing.

18 There are -- we're not pursuing two of the claims, two of
19 the investigations have concluded. There may be a third, but
20 I'm not clear on that. So we're not talking about six claims,
21 we're talking about four at this point. So I can clarify that
22 with -- with counsel. At some point we can stipulate to that.

23 THE COURT: Which ones are you -- are you dropping?

24 MR. PRICE: Thank you. We are not pursuing because
25 the investigation is closed. But let me just explain that
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1 Once we dismiss a charge our interest as an agency, that
2 breaks with the dismissal, so that's why we're not pursuing
3 it. It would be Mr. Lyle Kidd and I believe it's Teresa
4 Hopkins. Robin Hopkins, I'm sorry are the two that --

5 THE COURT: So you're dropping those sub claims from
6 the administrative expense claim?

7 MR. PRICE: That is correct. We will not be
8 pursuing those, right.

9 THE COURT: And I suppose it's -- it's possible that
10 even if I find your claim timely, or -- or excuse the late
11 filing and it otherwise survives the administrative expense
12 claim, it's still possible the rest of them may get -- the
13 rest of that claim may get dropped if the EEOC dismisses the
14 other charges.

15 MR. PRICE: That is quite possible, Your Honor.
16 That has happened.

17 THE COURT: When will you -- when will you know if
18 that -- if that happened -- if that's going to happen?

19 MR. PRICE: Well, I can follow up on a third. I
20 will know within a week whether one is -- one of the other
21 ones has been dismissed. To be honest, Your Honor, I can't
22 speak to the other ones.

23 I have been told that they are being processed. They are
24 in the advanced state of processing, but with our office and
25 its resources I -- nobody can give me a date and I really
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1 couldn't demand one of them.

2 THE COURT: Okay. Go ahead. You were saying.

3 MR. PRICE: Sure. So there was the 29th when I
4 became aware of it as I stated. Emailed out to all of our
5 claimants, our charging parties. I prepared the -- or the
6 application as quickly as possible and filed it.

7 We -- we don't -- and we do have a notice problem, Your
8 Honor. As I said, I can't prove we didn't get it in a timely
9 fashion. I can't say when we got it because it was not logged
10 or stamped.

11 However, I would just emphasize that I -- I don't --
12 there was no allegation of prejudice on behalf of the city
13 which is one of the acts. We have to look at the prejudice as
14 a possible issue in evaluating excusable neglect. And there's
15 also the shortness of the delay.

16 We're talking about a filing that was four days after the
17 deadline. Your Honor, I think those at least we have an
18 argument in our favor on that, the commission under an
19 excusable neglect analysis.

20 THE COURT: The Pioneer Investment factors.

21 MR. PRICE: Yes.

22 THE COURT: Basically.

23 MR. PRICE: The Supreme Court, yeah Pioneer
24 Investment, yes, Your Honor.

1 Supreme Court in the Pioneer Investment case, excusable
2 neglect, do include as you've alluded to the factor, the
3 danger of prejudice to the party opposing relief, the length
4 of the delay and its potential impact on judicial proceedings.

5 And you're arguing that those two factors weigh in favor
6 of finding excusable neglect. Another factor listed by the
7 Supreme Court in Pioneer is whether the movant acted in good
8 faith. Let's assume that's the case here just for purposes of
9 further discussion.

10 MR. PRICE: Yes.

11 THE COURT: Another factor listed though is the --
12 the reason for the delay including whether it was within the
13 reasonable control of the movant, the movant being the EEOC.
14 Wasn't the delay here within the reasonable control of the
15 EEOC?

16 MR. PRICE: I think I already --

17 THE COURT: Because the EEOC can't prove it didn't
18 get the notice that was certified as being mailed to it.

19 MR. PRICE: That certainly could be the case, Your
20 Honor. I -- I think that factor does -- does weigh against
21 us. I -- I can't prove when I got it.

22 THE COURT: So if that factor weighs against the
23 EEOC, a finding of excusable neglect in favor of the EEOC, but
24 you -- you argue the other factors weigh in favor. How -- how
25 should these be balanced out?

1 There is case law that says that this factor and whether
2 the delay was within the reasonable control of the movant is
3 the most important of the factors. The Supreme Court didn't
4 say that in Pioneer though.

5 And Pioneer also said the Court must take account of all
6 relevant circumstances surrounding the party's omission. If
7 it's reasonable control of the movant factor that weighs
8 against excusable neglect. So how should the Court rule --

9 MR. PRICE: Well, if --

10 THE COURT: -- given -- given that?

11 MR. PRICE: Well, if -- I don't think it's
12 dispositive, Your Honor. I think if Pioneer itself that
13 wasn't dispositive and they found excusable neglect in Pioneer
14 where it was the overworked attorney who it's dispositive.

15 THE COURT: But that -- in Pioneer that was only
16 because the Supreme Court found that the notice that had been
17 given was confusing and ambiguous. The notice of the claims
18 bar date at issue in that case. Wasn't -- isn't that -- isn't
19 that correct?

20 MR. PRICE: I think that was a factor yes, Your
21 Honor, as I recall reading the case.

22 THE COURT: That seemed to be the factor in Pioneer.
23 It wasn't -- I mean the Supreme Court seemed to go out of its
24 way to say that it would give little weight to any sort of
25 problems with the respondents, the party's attorney and

1 problems he was having, office upheaval in his law practice
2 and so forth. They were giving little weight to that.

3 It really was -- seemed to turn on the -- what the Court
4 called "the unusual form of notice employed in this case"
5 which the Court found to be ambiguous regarding the bar --
6 claim bar date. And that was a Chapter 11 case. Isn't that
7 right?

8 MR. PRICE: As I recall -- recall the case, yes.
9 They did -- the Court did spend a lot of time analyzing the --
10 the form of the notice, that is correct.

11 THE COURT: And the Supreme Court didn't -- in
12 Pioneer didn't suggest anywhere did it, that the moving -- if
13 the moving party's delay was caused by its attorney making a
14 mistake or collecting a matter, or missing a deadline because
15 they were overworked and they were having problems in their
16 law practice, those sorts of reasons that that would weigh in
17 favor of granting a finding of excusable neglect, did it?

18 MR. PRICE: No, it did not say that.

19 THE COURT: All right. Okay. So go on you were
20 saying.

21 MR. PRICE: But I do believe the other three factors
22 do. I mean I -- obviously this maybe sounds self serving, but
23 I believe I did act in good faith. I acted as quickly as I
24 could upon learning it after finding it on PACER and filed it.

1 hear anything about prejudice.

2 And the length of the delay, Your Honor, I -- I recognize
3 the purpose that bar dates serve, but that's -- there is also
4 excusable neglect, Your Honor. And --

5 THE COURT: Didn't the EEOC also get notice of the
6 January 26 bar date from the -- at least that the bar date
7 would be 45 days after the effective date of the confirmed
8 plan from the order confirming plan that was filed November
9 21, 2013, Page 104 and also from the eighth amended plan
10 itself?

11 MR. PRICE: We would have received those documents.

12 THE COURT: Didn't they both say that?

13 MR. PRICE: They do say that, Your Honor.

14 THE COURT: So the EEOC and -- and presumably you
15 too, you also as the EEOC attorney knew that you had -- you
16 knew as early as November 10 in the order confirming plan --
17 I'm sorry, November 12, 2014, the order confirming plan that
18 was filed, docket 8272, that there was looming out there this
19 45 day post-effective date deadline that was going to happen
20 when filing any administrative expense claims.

21 The only thing you didn't know at that point was exactly
22 when was going to be the effective date of the plan but you
23 knew -- you knew enough to know that you better watch for
24 that, didn't you --

1 THE COURT: -- didn't you?

2 MR. PRICE: Yes, Your Honor, I did.

3 THE COURT: And -- and so did the EEOC in general,
4 right?

5 MR. PRICE: Yes, I -- I would think yes. If it's
6 logged in, that's correct.

7 THE COURT: Okay. So even though you are saying you
8 were not consciously aware of what the December 10 notice said
9 and didn't consciously see that, didn't see that, read it
10 before the January 26 deadline for filing administrative
11 claims, you did know about that such a deadline was coming and
12 to watch for it, didn't you?

13 MR. PRICE: I was -- yeah, I was actually in
14 communications with headquarters about you know that yes, that
15 there's administrative expense issue and deadline that's
16 forthcoming, I just didn't know the date, but yes.

17 THE COURT: So and -- and if you had looked at the
18 docket for the case to look for any indication of when the
19 effective date was, as early as December 10 you would have
20 seen this notice that says the effective date is December 10,
21 2014.

22 MR. PRICE: Yes.

23 THE COURT: It was filed at docket 8649, December
24 10, 2014. So you would have -- you would have seen this and

25 you could have pulled it up and seen Paragraph 7A which has in
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1 it explicitly the January 26, 2015 deadline, right?

2 MR. PRICE: Correct.

3 THE COURT: And you received electronic notices --

4 notices of electronic filing for this case all along, I
5 assume.

6 MR. PRICE: No, I did not.

7 THE COURT: Oh, you did not.

8 MR. PRICE: No.

9 THE COURT: Okay. But you had access to PACER and
10 the ability to look at the docket and see what was happening
11 in the case at all times, right?

12 MR. PRICE: I did have access to PACER, yes.

13 THE COURT: And therefore you could see the docket
14 and pull up any documents that were filed.

15 MR. PRICE: Correct.

16 THE COURT: And read them. Okay. So anyway, go on.
17 You were -- what else do you want to say about this excusable
18 neglect concept.

19 MR. PRICE: That is -- that basically that is --
20 that's it. I mean I think that the defendant's argument with
21 respect to prejudice, I mean that it is somewhat conjectural
22 that there's going to be a flood of claims, late
23 administrative expense claims out. I don't know if there's
24 any proof of that.

1 would be the case. And that at this point that's all I have
2 is to --

3 THE COURT: Do you know how many administrative
4 expense claims were filed after the January 26, 2015 deadline?

5 MR. PRICE: I only know the other two that I was
6 told about with Ms. Stanley and --

7 THE COURT: So you don't know about there being a
8 flood of -- of these late filed administrative expense claims.

9 MR. PRICE: I have no idea, Your Honor, no.

10 THE COURT: All right. What else did you want to
11 say, anything?

12 MR. PRICE: Nothing at this point, Your Honor.

13 THE COURT: All right. Mr. Swanson, did you want to
14 reply?

15 MR. SWANSON: Your Honor, I think Mr. Price has been
16 very candid with the Court and I think based on the things
17 that he said there just can't be a finding of excusable
18 neglect here. He admits that the EEOC received the notice.
19 That no -- there's no ambiguity in the notice. And thus
20 there's no basis to find excusable neglect.

21 As Your Honor indicated, the most important factor with
22 respect to the excusable neglect is -- is whether this was in
23 the control of the movant and -- and -- and it certainly was.
24 Then the city would also raise the futility argument again
25 here even as Mr. Price indicated and as the city indicated in

1 its reply, the -- the charge was -- was basically based on the
2 unfounded allegations. Or the -- the application was based on
3 charges with unfounded allegations.

4 And -- and as Mr. Price indicated, three of them have
5 already been disposed of. Two, I'm sorry, two. And -- and
6 further it's -- these are not the type of claims that are
7 administrative expenses in a Chapter 9 case because they are
8 not costs of administration. That's a very very very narrow
9 category type of claim and -- and that doesn't fit here.

10 THE COURT: All right. Well, thank you both.

11 The -- with respect to the administrative expense claim
12 request filed by the Equal Employment Opportunity Commission,
13 the EEOC, it was filed January 30, 2015, docket number 9139.
14 That was four days after the January 26, 2015 deadline set by
15 the Court for the filing of such administrative expense claim
16 requests and therefore it was untimely.

17 There is -- it's -- it's absolutely clear in my view and
18 is in both the eighth amended plan that was the plan that was
19 confirmed in this bankruptcy case and in the Page 104 of the
20 order confirming plan, and as reiterated in the December 10,
21 2014 notice of the confirmation of the plan and of the
22 occurrence of the effective date, docket number 8649. I'll
23 refer to that as the December 10 notice of that administrative
24 expense claims -- request for payment of administrative

1 was 45 days after the effective date of December 10, 2014 of
2 the confirmed plan of adjustment.

3 And that if the administrative claim creditors who -- who
4 filed -- the administrative claim creditors who filed a
5 request for payment of administrative claims after the January
6 26th deadline would be barred from asserting such claims,
7 forever barred against asserting such claims against the city
8 its property as administrative claims. Basically the
9 administrative claims would be denied.

10 That's absolutely clear from Paragraph 7A of the December
11 10 notice. As I said earlier, it's also absolutely clear from
12 both the order confirming plan of -- of November 12, 2014 at
13 Page 104 and the -- the actual eighth amended plan that that
14 order confirmed.

15 The EEOC does not contend or claim and based on what Mr.
16 Price, its attorney has said in today's hearing, it is clear
17 that the EEOC cannot colorably claim and cannot prove or
18 present any evidence that the EEOC did not actually receive in
19 the mail from the city's noticing agent a copy of the December
20 10 notice which gave -- clearly gave notice to the EEOC and
21 other parties of the December 10, 2014 effective date of the
22 plan. And also of the -- of January 26, 2015 deadline,
23 Paragraph 7A of that notice for filing administrative expense
24 claims.

1 otherwise, did receive within a reasonable and short time
2 after the notice, December 10 notice was mailed to it by the
3 city's noticing agent on or -- on or before December 16, 2014,
4 the December 10 notice, well before the January 26, 2015
5 filing deadline for administrative expenses came and went.

6 Now Mr. Price, the attorney representing the EEOC with
7 respect to the administrative claims, sub claims at issue, has
8 said in his declaration filed with his -- the EEOC's motion
9 for an extension of the claim filing deadline, that he himself
10 did not see the December 10 notice and did not himself
11 personally know of the -- that January 26, 2015 was the
12 administrative expense filing deadline until after that
13 deadline passed.

14 And he said he first discovered that bar date as he put
15 it by independent research on PACER by looking at the Court's
16 docket on January 29, 2015. That of course was three days
17 after the deadline had passed.

18 For reasons unknown to both Mr. Price and presumably to
19 the EEOC as far as the Court can tell and certainly unknown to
20 the Court, the -- while the EEOC received the December 10
21 notice, it did not make Mr. Price its attorney in this matter,
22 aware, consciously aware of the notice so that he could read
23 it and be aware of its contents that way.

24 Mr. Price, however, admits in today's hearing that he was

1 an administrative expense claim filing deadline established,
2 that it was 45 days after the effective date of the confirmed
3 plan and the only thing he didn't know at that point was what
4 that effective date was going to be.

5 He does further admit, however, that he had access to the
6 Court's docket obviously through PACER and could have checked
7 the docket and learned of the December 10 notice as early as
8 December 10 when it was filed 2014 which is the notice that --
9 that gave notice to the world that December 10, 2014 was the
10 effective date of the plan and that's in Paragraph 1 on Page 1
11 of that notice and therefore and as stated in Paragraph 7A on
12 Page 7 of that notice, that the administrative expense filing
13 deadline was January 26, 2015.

14 But Mr. Price did not sufficiently review and keep an eye
15 on the docket to find that notice, and read it and become
16 aware of these things until January 29, 2015 according to what
17 he has said in today's hearing and in his declaration. That
18 of course was after the deadline had passed.

19 Now what we have here is a situation where both the EEOC
20 in general and Mr. Price its attorney in particular, neglected
21 -- are guilty of neglect in failing to file or cause to be
22 filed an administrative expense claim for these claimants by
23 the January 26, 2015 deadline.

24 The question then of course is whether the Court should

1 excusable neglect. And the rule that applies of course, is
2 federal bankruptcy Rule 9006(b)(1) which says that the Court
3 for cause may show -- cause shown may extend a deadline on a
4 motion made after the expiration of the deadline where the
5 failure to act by the moving party was the result of excusable
6 neglect.

7 The leading case on what excusable neglect means in this
8 context is the Supreme Court's decision in the Pioneer
9 Investment case which is cited in the papers filed by the
10 parties and which we have discussed in today's hearing.

11 As we have discussed in today's hearing, the Supreme
12 Court said that excusable neglect requires consideration of
13 all relevant circumstances surrounding the moving party's
14 omission, "including the danger of prejudice to the party
15 opposing relief, the length of the delay, and its potential
16 impact on judicial proceedings, the reason for the delay,
17 including whether it was within the reasonable control of the
18 movant, and whether the movant acted in good faith".

19 I will assume for purposes of ruling on this motion by
20 the EEOC that the EEOC acted in good faith. It's not guilty
21 of bad faith in any way in its neglect and in its attorney's
22 neglect.

23 And by the way, Pioneer Investments is clear that a party
24 whose attorney has neglected a matter leading to the missing
25 of the deadline is responsible for their attorney's, their
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1 chosen attorney's neglect. That is such neglect is
2 attributable to the attorney's client as well. And so
3 excusable neglect has to be evaluated with respect to both the
4 party and the attorney.

5 With respect to the factors under Pioneer Investment, the
6 danger of prejudice to the party opposing relief and the
7 length of the delay and its potential impact on judicial
8 proceedings, these factors do somewhat favor the Court finding
9 excusable neglect on the party EEOC since the administrative
10 expense claim was filed January 30, only four days after the
11 deadline. And since there does not appear to be a -- the city
12 is not arguing that there is a large number of administrative
13 expense claims that were filed after the January 26 deadline
14 so that if the Court found excusable neglect in this case it
15 might open the flood gates to allowing a number of untimely
16 administrative expense claims.

17 Although there is the same kinds of issues might come up
18 with respect to proofs of claim that were not timely filed by
19 the proof of claim filing deadline back in 2014. And the
20 Court has already had to rule on at least one of those proof
21 -- late filing proof of claim issues in a recent hearing and
22 refused to find excusable neglect in that case. But in
23 general these factors do somewhat at least favor a finding of
24 excusable neglect under the Pioneer Investment standards.

1 the delay by the EEOC here missing the deadline, including
2 whether it was within the reasonable control of the movant.
3 This factor in my view strongly weighs against finding
4 excusable neglect here by the EEOC and its attorney under
5 Pioneer because it clearly was within the reasonable control
6 of the EEOC and its attorney both to meet the January 26, 2015
7 filing deadline for administrative expenses. And the delay in
8 missing the deadline and doing so was within the reasonable
9 control of -- of the EEOC and its attorney Mr. Price here.

10 So that factor which I do view as being the most
11 important of the specific factors listed in Pioneer, that
12 factor in my view tips the balance against the Court being
13 able to find excusable neglect here by the EEOC or its
14 attorney.

15 And so the EEOC's administrative expense claim must be
16 denied in all of its aspects, all of its sub parts, and the
17 city's objection to that administrative expense claim must be
18 sustained in its entirety on the ground that the claim was not
19 timely filed as the city has argued. And because that
20 timeliness is not the subject or the result of excusable
21 neglect in the Court's view. So the city's objection to the
22 administrative expense claim is sustained. The administrative
23 expense claim is denied and disallowed. And the EEOC's motion
24 for -- to allow the late filing of the claim is denied for
25 these reasons.

1 I'll prepare and enter an order reflecting this ruling.

2 Thank you. I believe that concludes matters for today then.

3 Thank you all.

4 MR. SWANSON: Thank you, Your Honor.

5 THE CLERK: All rise. Court is adjourned.

6 (Court Adjourned at 3:44 p.m.)

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7 We certify that the foregoing is a correct transcript from the
8 electronic sound recording of the proceedings in the
9 above-entitled matter.

10

11 /s/Deborah L. Kremlick, CER-4872
12 Jamie Laskaska

Dated: 6-5-15

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